IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Criminal Appeal No. 831 of 2001 **Decided on: June 12, 2006**

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 12.06.2006

(Initial of Judges)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 831 of 2001
(Old No. 2779 of 1988)

Smt. Bhanumanti W/o Baldeo
R/o Inderpur, P.S. Kichcha,
District Nainital.

…….. Appellant

Versus

The State

……. Respondent

Mr. T.A. Khan, Advocate for the appellant.
Mr. D.K. Sharma, Government Advocate with Mr. H.C. Pandey,
Asstt. Government Advocate for the respondent State.

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

Dated: June 12, 2006.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 28.11.1988, passed in Sessions trial No. 210 of 1987, by the then, learned Ist Additional Sessions Judge, Nainital, whereby the appellant Bhanumati was convicted under Section 302 of the Indian Penal Code, 1860 (hereinafter referred as I.P.C.) and has been sentenced to imprisonment for life.

2) Prosecution story in brief is that the complainant Tilak Ram (P.W. 1), father of the deceased, lodged the first information report (Ext. A – 1) with police station Kichcha

on 27.07.1987 at 12:45 hours, alleging that his daughter Smt. Jasoda was married with Ash Narayan S/o Baldeo R/o Inderpur, P.S. Kichcha, District Nainital. The accused / appellant Smt. Bhanumati is the mother of Ash Narayan and mother-in-law of the deceased. The behaviour of accused/ appellant was not good with the deceased and she used to threaten her. She also used to turn out her daughter-in-law (deceased) from her house but some days before the occurrence there was a compromise and Smt. Jasoda (deceased) was sent by her parents to live with her in-laws. In the intervening night of 21st and 22nd July, 1987, accused / appellant Bhanumati poured kerosene oil over Smt. Jasoda and set her on fire. The complainant, Tilak Ram (P.W. 1), has also stated that he got the information of the incident from the Up Pradhan of the Village Panchayat and after visiting the hospital and after enquiring about the incident from his daughter he came to the police station to lodge the F.I.R. against the appellant. Constable Ram Pal Singh (P.W. 2) registered the first information report (Ext. A – 1) and prepared check report (Ext. A – 2) and made entry in the general diary (extract of which is Ext. A – 3). The crime was registered as crime No. 158 of 1987 under Section 307 of the I.P.C. Meanwhile, the dying declaration (Ext. A – 4) of the deceased was recorded by P.W. 3, Purshottam Joshi, Naib Tehsildar, Kichcha. After about seven days, injured Jasoda succumbed to the injuries due to septicemia on 29.07.1987 at Primary Health Center, Kichcha and the case was converted into one under Section 302 of the I.P.C. P.W. 7, S.I. R.B. Lal on receiving information of death of Jasoda went to the Primary Health Center and took the dead body

in his possession and got prepared inquest report (Ext. A – 12) and other papers namely photo sketch of the dead body (Ext. A – 14), police form No. 13 (Ext. A – 13), police form No. 33 (Ext. A – 15), letter requesting for postmortem examination (Ext. A – 16). The dead body was sent for postmortem examination. P.W. 5, Dr. J.S. Pangti conducted the postmortem examination of the dead body on 30.07.1987. According to the said Medical Officer cause of death was septicemia, which was possible due to extensive burns. He prepared the postmortem examination report (Ext. A – 9). Initially, the investigation was done by P.W. 7, Sub Inspector R.B. Lal and after the crime was converted to one under Section 302 of I.P.C., further investigation was conducted by P.W. 8, R.P. Singh, Station House Officer. After the statements of witnesses were recorded and site plan (Ext. A –10) was prepared, charge sheet (Ext. A – 19) against the appellant, was submitted in the court by P.W. 8 (Investigating Officer). Concerned learned Magistrate after registering the charge sheet provided necessary copies, as required under Section 207 of the Cr.P.C., to the accused and committed the case of the court of Sessions for trial.

3) The learned Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 of the I.P.C. against accused / appellant Bhanumati. The accused / appellant pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1, Tilak Ram, informant and father of the deceased; P.W. 2, Constable Ram Pal Singh, who registered the first information report (Ext. A – 1) and

prepared check report (Ext. A – 2) and made entry in the general diary (extract Ext. A – 3); P.W.3, Purshottam Joshi, Naib Tehsildar, Kichcha, who recorded the dying declaration (Ext. A – 4) of the deceased, at about 11:30 A.M. on 22.07.1987; P.W.4, Dr. R.P. Singh, who recorded the injuries of Jasoda when she was brought to Hospital in an injured condition on 22.07.1987, at 10:00 A.M. in Primary Health Center, Kichcha and who prepared injury report (Ext. A – 7) and supplementary injury report (Ext. A – 8); P.W. 5, Dr. J.S. Pangti, who conducted the autopsy and prepared postmortem examination report (Ext. A – 9); P.W. 6, Constable Padam Singh, who accompanied the dead body to Mortuary for postmortem examination; P.W. 7, Sub Inspector R.B. Lal, who initially investigated the crime and got prepared inquest report (Ext. A –12) of dead body and also prepared the site plan (Ext. A –10), photo sketch of the dead body (Ext. A – 14), police form No. 13 (Ext. A – 13), police form No. 33 (Ext. A – 15); letter requesting for postmortem examination (Ext. A – 16) and P.W. 8, R.P. Singh (Investigating Officer), who submitted the charge sheet. The oral and documentary evidence was put to the accused under Section 313 of the Cr.P.C., in reply to which she alleged that the same was wrong and her daughter-in-law, Jasoda Devi had committed suicide by setting herself of fir, and due to enmity with the parents of the deceased she has been falsely implicated in the case. In her defence D.W. 1, Smt. Shyamwati was produced as witness. After hearing the arguments of prosecution and that of the defence, learned Sessions Judge found the appellant guilty of the offence charged against her and convicted accused / appellant Bhanumati under Section 302

of the I.P.C., and after hearing on sentence, sentenced her to imprisonment for life.

4) Aggrieved by the judgment and order dated 28.11.1988, the convict has preferred this appeal. The appeal was initially filed before the Allahabad High Court in the year 1988 from where it was transferred to this Court under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) We heard learned counsel for the parties and perused the entire evidence on record.

6) Before further discussions, it is pertinent to mention here, the injury found on the person of Jasoda, after the incident, by P.W. 4, Dr. R.P. Singh, at about 10:00 A.M. on 22.07.1987, in Primary Health Center, Kichcha who recorded the injury report and prepared Ext. A – 7 and supplementary injury report Ext. A – 8, which disclose following injury:

1. ***Superficial burn at outer aspect of the neck. Ruptured blusters present.***
2. ***Burn at chest except the left breast present. Blisters are present.***
3. ***Whole of the abdomen is burnt. It is reddish in colour anterior and posterior aspect.***
4. ***Burn at the left hand present. It is reddish in colour.***
5. ***Burn of the both buttock and both lower limbs are burnt. It is depth nature.***
6. ***Deep burn of the upper left limo present.***

According to Dr. R.P. Singh (P.W. 4) there were burns of Grade III in left upper and both lower limbs. There were superficial burns on other parts of body. Patient was kept under observation. Burns were about 75%.

7) After about seven days of incident injured Jasoda died of burn injuries due to septicemia in the Primary Health Center, Kichcha. P.W. 5, Dr. J.S. Pangti on 30.07.1987, at 2:30 P.M., conducted the autopsy on the body of the deceased and prepared postmortem examination report Ext. A –9. In his report he mentioned that Smt. Jasoda was a young female about 25 years of age having average built body. Rigor mortis was present in upper limbs. Postmortem staining could not be seen as there were extensive burn on whole body. Both legs have been amputated below knee joint. The Medical Officer found following ante mortem injuries on the person of the deceased Jasoda:

i) ***There is pus and slough formation in whole of the left upper arm granulation tissue is present in between, whole skin destroyed.***

ii) ***There is pus and slough formation in lower abdomen and chest front below the left wrist, whole skin destroyed.***

iii) ***There is pus and slough formation in both the lower limb in above knee. Slight granulate tissue in between.***

iv) ***There is slough and pus present in both hips and half of back (lower)Troces, skin destroyed.***

v) ***Slough formation at anterior aspect of neck at upper part sternum. Skin destroyed***

vi) Amputation below knee done at upgraded P.H.C. Kichcha for gangrene.

In the opinion of the Medical Officer, who conducted the postmortem examination the cause of death was septicemia following the extensive burns.

8) Meanwhile, soon after Jasoda was admitted in Primary Health Center, Kichcha, her dying declaration was recorded by P.W. 3, Purshottam Joshi, Naib Tehsildar, Kichcha, on 22.07.1987, at 11:30 A.M., who prepared document Ext. A –4 of the same. The dying declaration was recorded in the presence of P.W. 4, Dr. R.P. Singh, who attended the injured Jasoda, when she was brought in that condition and he also made endorsement as to mental fitness of the deceased. The dying declaration of the deceased reads as under:

> “c;ku fd;k fd fnukd 21&07&1987 dk jk=h le; yxHkx nk ct dk gksxk] esa viu dejs esa lks jgh Fkh rFkk njokts dh ikl ejh lkl ftldk uke dk e>s irk ugh gs og Hkh lks jgh FkhA ejh vk[k tc [kyh rks e>s irk pyk fd ejs mij feVVh dk rsy Mkydj vkx fn;k lykbZ l yxk nhA ejk “kjhj vkx l ty jgk FkkA vkx yxus ckn esa dkQh fpYykbZA ejs fpYykus l ejk vkneh o ejh lkl ejs dejs esa vkbZ rFkk ejh “kjhj esa vkx esa pknj Mkydj c>kus yxA ejk vkneh o lkl jkus yxhA eus dy jkr [kkuk ugh [k;k Fkk] D;kfd ejs iVV esa gYdk nnZ FkkA dy fnukd 21-07-87 dk fnu esa ejh lkl ls e>s dgk fd r>s rjs vkneh l ckyus ugh nxhA ejh lkl us nks rhu fnu iwo e>s dgk fd esa rjs fy, ,sls d:xh tks dkbZ tku u ik;xkA dy ;k nks rhu fnu iwo ejk fdlh l dkbZ >xMk ugh gqvk FkkA bl ekeys esa ejs vkneh o ejs lls dk fcydqy Hkh nk"k ugh gA ejs “kjhj esa feVVh rsy o vkx ejh lkl us yxkbZ gA ejs

"kjhj e vkx yxku ckn ejh lkl u dgk fd vkx eu yxkb gA bl ckr dk fdlh l er dguk dguk fd cRrh yEi l vkx yxh g rFkk ejs ijk e fxjdj jku yxhA ejs vkneh u ejh lkl l dgk fd vEek reu D;k vkx yxkb'A ejk lls dk Hkh dkb nk'k ugh g ejk lls [kr e dke dju jkr e x; Fk D;kfd /kku yxku d le; [krk e jkrfnu dke djuk iMrk gA e bruk fQj dg nrh g fd bl ekey e ejs vkneh o ejk lls rFkk ?kj d vU; fdlh dk nk'k ugh g] nk'k ejh lkl dk gh g] ;gh ejs c;ku g ludj rLnhd fd;kA

9) This is not a case of direct evidence in which accused was seen committing crime by any of the witnesses examined by prosecution. However, the most important piece of evidence is the dying declaration, Ext. A –4 (quoted above), in which the deceased before her death have given the version as to the cause of her death. This statement of the deceased which was recorded by P.W. 3, Purshottam Joshi, Naib Tehsildar, Kichcha makes it clear that before the day of incident, the appellant, mother-in-law of the deceased, had given her threat. Deceased Jasoda in her dying declaration states that she was sleeping when in the intervening night of 21st and 22nd July, 1987, at about 2 A.M., she found that someone has poured kerosene on her clothes and set her on fire. Though, she stated that on her shouts for help her husband who was sleeping at a distance from the hut in which she was sleeping came along with appellant and made attempts to extinguish the fire by putting bedsheet over her, but the deceased further categorically stated that her husband and her father-in-law were not at fault and specifically it has been mentioned by the deceased in her dying declaration that 'ejs "kjhj e feVVh

r[y o vkx ejh lkl u[yxkbZ gS’ (my mother-in-law poured kerosene and set fire on my body). She further narrated that after the fire engulfed her, her mother-in-law herself told the deceased that she has set her on fire. Deceased further states in her statement i.e. dying declaration that her mother-in-law asked her to say that the fire took place through a kerosene lamp. Not only this, the deceased further states in her above statement that her husband also asked the appellant ‘vEek] r[eu[D;k[vkx yxkbZ’ (mother! Why did you set her on fire?). Lastly, the deceased makes the declaration that no one else except her mother-in-law is responsible for the crime.

10) The case of the defence is not that Jasoda had not received the burn injuries. What the appellant has stated in her reply to the evidence put to her under Section 313 of the Cr.P.C. is that Jasoda committed suicide. As far as the burn injuries are concerned, the same not only get corroboration from the medical injury report (Ext A –7) but also from the ante mortem injuries found at the time of autopsy as mentioned in Ext. A –9 (quoted above). On behalf of the appellant it is argued that the accused cannot be convicted on the basis of dying declaration alone unless the same gets corroboration from other evidence on record. No doubt, that the person making dying declaration, who has died, cannot be cross-examined by the defence and, as such, the statement of such person is required to be read cautiously. But in the present case, there is nothing on the record which gives rise to any reasonable cause to doubt the truthfulness of the dying declaration, quoted above.

Rather, statement of P.W. 1, the informant and father of the deceased, corroborates the fact that the deceased before her death gave similar statement to this witness also when he went to see her in the hospital. As far as the evidence of mental condition of the deceased at the time of making of the dying declaration is concerned, P.W. 4, Dr. R.P. Singh, who was present along with P.W.3, Purshottam Joshi, Naib Tehsildar, has certified that at the time of making dying declaration the deceased was mentally fit to make the statement.

11) On behalf of the appellant our attention was drawn to statement of D.W. 1, Shyamwati, who has stated that she reached at the spot soon after the incident and deceased did not disclose name of Bhanumati (the appellant) to her that it was she who set her on fire. From the statement of this defence witness it is clear that she reached at the spot after the fire had already been extinguished on the body of the deceased. It is not necessary that the deceased who had received 72% burn injuries and that too of Grade III, should have told each and everyone coming to see her that who has set her on fire.

12) Mr. T.A. Khan, learned counsel for the appellant argued before us that had the deceased been set on fire inside hut, the police should have recovered burnt clothes or bed to substantiate the prosecution story. This short coming, in our opinion, is not sufficient to create any doubt in the prosecution story for the reason that it is not disputed that in the night of the incident deceased was in her house and she did receive the burn injuries.

13) It is also contended on behalf of the appellant that from the dying declaration it reflects that the appellant also went to the deceased along with the husband of the deceased to extinguish the fire. In this connection, it is further contended that the person who had set the deceased on fire would not have gone to extinguish it. We see little force in this contention for the reason that to show her son and the people who started gathering on the shouts of the deceased it was but natural that the mother-in-law would have pretended to be innocent before others that she had not committed the crime.

14) Mr. T.A. Khan, learned counsel for the appellant submitted that no memo has been brought on record by the prosecution whereby the Naib Tehsildar was requested to record the dying declaration of the deceased. And, on its basis he further submitted that the dying declaration recorded by Naib Tehsildar should not be relied. We do not see much force in the submission of learned counsel for the reason that P.W. 3, Purshottam Joshi, the Naib Tehsildar in his statement on oath has stated that he received report / massage from the Primary Health Center and on that he reached there and recorded statement of deceased before her death on 22.07.1987, at 11:30 A.M.

15) Lastly, it is also argued on behalf of the appellant that in the penultimate paragraph of his cross- examination P.W. 1, Tilak Ram (informant and father of the deceased) has admitted that deceased Jasoda had no cordial relations with her mother-in-law. On its basis, it is argued that the deceased might have named her mother-in-law in the dying declaration due to the enmity. From the entire statement as

recorded in the dying declaration (Ext. A –4) it does not appear that she had named her mother-in-law falsely. Had that being so, she would not have stated that on her shout for help, her mother-in-law attempted to extinguish fire with the husband of the deceased. The narration and dying declaration appears to be natural and reliable.

16) In view of the above discussion, we are of the view that the trial court has rightly found appellant Bhanumati guilty of the charge framed against her, as the same stand proved from the evidence adduced by the prosecution. As such, we see no error of law or that of fact in the impugned judgment and order passed by the trial court whereby the appellant is convicted under Section 302 of the I.P.C. and sentenced to imprisonment for life. Accordingly, the appeal is liable to be dismissed. The appeal is dismissed. The appellant Bhanumati is on bail. Her bail is cancelled. She shall be taken into custody forthwith by the court concerned so that she may serve out the sentence of imprisonment for life, as awarded against her.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. June 12, 2006.
H. Negi